

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MAXINE E. JENKINS,

Plaintiff,

v.

06cv0632

**ELECTRONICALLY FILED**

TEXAS INTERNATIONAL LIFE INSURANCE,

Defendant.

**Memorandum Order**

This is a breach of contract/bad faith action and the sole basis for jurisdiction is diversity of citizenship. Plaintiff alleges that defendant breached a disability insurance policy when it failed to pay her disability benefits. Upon filing of the complaint, plaintiff averred that the amount in controversy exceeded \$75,000.00 (doc. no. 1). Defendant denies plaintiff's allegations and asserts a counterclaim. Upon filing of the answer and counterclaim, defendant denied that the amount in controversy exceeded \$75,000.00 (doc. no. 3).

Currently pending before this Court is plaintiff's motion to dismiss for lack of subject matter jurisdiction (doc. no. 15). In support thereof, plaintiff has provided a brief as well as a declaration affirming to the Court that, upon further investigation, the amount in controversy "is not presently nor can be reasonably expected to meet or exceed the jurisdiction amount of \$75,000" (doc. no. 18).

Based upon the declaration of plaintiff's counsel and in light of plaintiff's counsel's representation that the amount of benefits due to date is approximately \$900.00, the Court is satisfied that the amount in controversy, even including attorney's fees pursuant to the Pennsylvania bad faith statute, 42 Pa. Cons. Stat. Ann. § 8371, does not exceed, nor could it reasonably be expected to exceed \$75,000.00.

Accordingly, for these reasons, the Court will grant plaintiff's motion to dismiss for lack of subject matter jurisdiction (doc. no. 15), and will dismiss this action without prejudice for plaintiff to follow the appropriate procedure under 42 Pa. Cons. Stat. Ann. § 5103.

The clerk shall mark the docket as closed.

SO ORDERED this 30th day of November, 2006.

s/Arthur J. Schwab

Arthur J. Schwab

United States District Judge

cc: All counsel of record